Ladang Spk Sdn Bhd v Rainbow Entity Sdn Bhd & Anor

A

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24NCVC-1400–08 OF 2013
YEOH WEE SIAM J
20 DECEMBER 2013

B

Contract — Sale and purchase agreement — Agreement — Land — Completion of SPA subject to fulfilment of conditions precedent — Vendor to make application to remove caveat — Plaintiff's application to remove caveat dismissed by High Court — Plaintiff terminated the SPA — Second defendant refused to accept termination but had unilaterally agreed to give plaintiff extension of time for removal of caveat — Plaintiff did not agree to such extension of time — Whether provisions of SPA prevail — Whether plaintiff's obligations to fulfil conditions precedent over — Whether plaintiff entitled to rescind and terminate SPA

C

D

Land Law — Caveats — Private caveats — Removal of — Caveatable interest — Whether second defendant had legal or registrable interest in lands — Whether payment of deposit and part payment gave second defendant caveatable interest — Whether balance of convenience lay in favour of plaintiff to remove second defendant's caveat — Whether second defendant prejudiced in any way by the removal of its caveat — National Land Code ss 323(1)(a) & 327

E

F

By an agreement dated 30 June 2004 between the plaintiff and MCK Development Sdn Bhd ('MCK'), the plaintiff became the registered owner of the two parcels of land in Bandar Johor Bahru ('the said lands'). As there was non-fulfilment of certain terms of the agreement between the plaintiff and MCK, the plaintiff and MCK then entered into a settlement agreement in February 2008 ('settlement agreement'). As a result, MCK lodged a private caveat over the said lands (MCK's caveat).The plaintiff alleged that due to the failure of MCK to pay the plaintiff the settlement consideration within the stipulated timeframe, the plaintiff then became entitled under the terms of the settlement agreement to sell the said lands to any third party. MCK had instituted an action against the plaintiffs seeking, inter alia, that MCK had the right to sell the said lands. In June 2011, the plaintiff agreed to sell the said lands to the first defendant and a sale and purchase agreement was entered into ('the SPA'). A deed of novation was then executed whereby the first defendant named the second defendant as its nominee and transferred all its rights under the SPA to the second defendant. Pursuant to the SPA, both the first and the second defendants lodged private caveats respectively over the said lands. The completion of the SPA was subject, inter alia, to the conditions that the vendor at its own cost and expense shall apply to the High Court to remove MCK's

G

H

I

caveat. The plaintiff application to remove MCK's caveat was however dismissed by the Johor Bahru High Court. The plaintiff then informed the second defendant of the decision and accordingly notified the second defendant that the agreement had been deemed terminated pursuant to cll 3.3 and 3.7 of the SPA. The plaintiff also informed the second defendant that the deposit paid under the SPA would be uplifted and refunded to the second defendant. However, the second defendant had refused to accept the termination and instead was prepared to extend the time period to fulfil the condition precedent, namely the removal of MCK's caveat. The plaintiff however maintained its position that the SPA was lawfully terminated. Hence, the second defendant commenced legal proceedings against the plaintiff claiming in essence for a declaration that the SPA and the deed of novation were still valid and enforceable and that the plaintiff continued with its action to remove MCK's caveat.

Held, allowing the plaintiffs' application with costs:

(1) The payment of a deposit and part payment by the second defendant did not give it a caveatable interest in the said lands. If at all the second defendant had a claim against the plaintiff, it would be one for a civil debt, but not one which creates a caveatable interest in the said lands. The second defendant had not shown that it has a legal or registrable interest in the said lands, or in other words, a caveatable interest within the meaning of s 323(1)(a) of the National Land Code (see paras 29–30).

(2) In this case, the plaintiff as vendor, failed to get an order from the Johor Bahru High Court to remove MCK's caveat. Thus, under cl 3.3 of the SPA, the SPA was deemed to be rescinded and shall remain terminated. There was no evidence that both parties had otherwise agreed to the extension of time to be given to the plaintiff to apply for a second time to remove MCK's caveat. It was only the second defendant who had unilaterally agreed to give the plaintiff an extension of time to remove MCK's caveat which the plaintiff did not agree. In such a situation, the provisions in the SPA, in particular cl 3.3, should prevail. The SPA remained terminated. That being the case, the second defendant no longer had a caveatable interest in the said lands (see paras 33–34).

(3) The plaintiff had fulfilled its obligations under cl 3.1.1 of the SPA when it made the application to the Johor Bahru High Court to remove MCK's caveat. When such court dismissed the plaintiff's application, the plaintiff's obligations to fulfil the conditions precedent were over and the plaintiff was entitled to rescind and terminate the SPA. With the termination of the SPA, the second defendant no longer had any caveatable interest in the said lands. It follows that the second defendant had no serious issue to be tried (see paras 35–36).

(4) The balance of convenience lay in favour of the plaintiff to remove the

second defendant's caveat. The existence of the caveat would continue to adversely affect the plaintiff's right as the registered owner of the said lands. In any case, even with the removal of the second defendant's caveat here, the said lands were still under MCK's caveat pending the outcome of the hearing in the High Court in Kuala Lumpur, which suit was now consolidated with the second defendant's suit in Johor Bahru. The plaintiff would not be able to deal with or sell the said lands even though this application was allowed. The second defendant was therefore not prejudiced in any way by the removal of its caveat (see paras 37–38).

[Bahasa Malaysia summary

Melalui satu perjanjian bertarikh 30 Jun 2004 antara plaintif dengan MCK Development Sdn Bhd ('MCK'), plaintif menjadi pemilik berdaftar dua bidang tanah di Bandar Johor Bahru ('tanah tersebut'). Memandangkan terdapat ketidakpatuhan beberapa terma perjanjian antara plaintif dan MCK, plaintif dan MCK kemudiannya memeterai satu perjanjian penyelesaian pada Februari 2008 ('perjanjian penyelesaian'). Disebabkan itu, MCK memasukkan satu kaveat persendirian ke atas tanah tersebut ('kaveat MCK'). Plaintif mendakwa bahawa disebabkan kegagalan MCK untuk membayar plaintif pertimbangan penyelesaian dalam tempoh yang ditetapkan, plaintif kemudiannya berhak di bawah terma-terma perjanjian penyelesaian untuk menjual tanah tersebut kepada mana-mana pihak ketiga. MCK telah memulakan satu tindakan terhadap plaintif-plaintif menuntut, antara lainnya, bahawa MCK mempunyai hak untuk menjual tanah tersebut. Pada Jun 2011, plaintif bersetuju untuk menjual tanah tersebut kepada defendan pertama dan satu perjanjian jual dan beli telah dimeterai ('PJB'). Satu surat ikatan novasi dimeterai yang mana defendan pertama menamakan defendan kedua sebagai penamanya dan memindahkan kesemua haknya di bawah PJB kepada defendan kedua. Menurut PJB, defendan pertama dan kedua, masing-masing memasukkan kaveat persendirian ke atas hartanah tersebut. Penyempurnaan PJB adalah tertakluk, antara lainnya, kepada syarat bahawa penjual dengan menggunakan kos dan perbelanjaan sendiri memohon kepada Mahkamah Tinggi untuk mengeluarkan kaveat MCK. Permohonan plaintif untuk mengeluarkan kaveat MCK bagaimanapun ditolak oleh Mahkamah Tinggi Johor Bahru. Plaintif kemudiannya memaklumkan defendan kedua mengenai keputusan tersebut dan dengan itu memaklumkan defendan kedua bahawa perjanjian tersebut dianggap ditamatkan menurut klausa 3.3 dan 3.7 PJB. Plaintif juga memaklumkan kepada defendan kedua bahawa deposit yang dibayar di bawah PJB akan ditarik balik dan dipulangkan kepada defendan kedua. Walau bagaimanapun, defendan kedua enggan menerima penamatan tersebut dan sebaliknya bersedia untuk melanjutkan tempoh masa bagi memenuhi syarat terdahulu, iaitu pengeluaran kaveat MCK. Oleh itu, defendan kedua memulakan prosiding undang-undang terhadap plaintif mendakwa pada dasarnya untuk satu deklarasi bahawa PJB dan surat ikatan

novasi adalah masih sah dan boleh dikuatkuasakan dan bahawa plaintif meneruskan tindakannya untuk mengeluarkan kaveat MCK.

Diputuskan, membenarkan permohonan plaintif dengan kos:

(1) Bayaran deposit dan sebahagian bayaran oleh defendan kedua tidak memberikannya kepentingan kaveat ke atas tanah tersebut. Sekiranya defendan kedua sememangnya mempunyai tuntutan terhadap plaintif, ia akan menjadi satu hutang sivil tetapi bukannya yang mewujudkan kepentingan kaveat ke atas tanah tersebut. Defendan kedua tidak menunjukkan bahawa ia mempunyai kepentingan undang-undang atau berdaftar ke atas tanah tersebut, atau dalam erti kata lainnya, kepentingan kaveat mengikut pengertian s 323(1)(a) Kanun Tanah Negara (lihat perenggan 29–30).

(2) Dalam kes ini, plaintif sebagai penjual, gagal untuk mendapatkan perintah daripada Mahkamah Tinggi untuk mengeluarkan kaveat MCK. Oleh itu, di bawah klausa 3.3 PJB, PJB dianggap terbatal dan hendaklah kekal ditamatkan. Tiada keterangan bahawa kedua-dua pihak kemudiannya bersetuju untuk lanjutan masa diberikan kepada plaintif untuk kali kedua bagi mengeluarkan kaveat MCK. Hanya defendan kedua yang secara unilateral bersetuju untuk memberikan plaintif satu lanjutan masa untuk mengeluarkan kaveat MCK yang mana plaintif tidak bersetuju. Dalam situasi demikian, peruntukan-peruntukan PJB, khususnya klausa 3.3, harus digunapakai. PJB kekal ditamatkan. Oleh yang demikian, defendan kedua tidak lagi mempunyai kepentingan kaveat ke atas tanah tersebut (lihat perenggan 33–34).

(3) Plaintif telah memenuhi kewajipannya di bawah klausa 3.1.1 PJB di mana ia membuat permohonan kepada Mahkamah Tinggi Johor Bahru untuk mengeluarkan kaveat MCK. Apabila mahkamah tersebut menolak permohonan plaintif, kewajipan plaintif untuk memenuhi syarat terdahulu telah selesai dan plaintif berhak untuk membatalkan dan menamatkan PJB. Dengan penamatan PJB, defendan kedua tidak lagi mempunyai kepentingan kaveat ke atas tanah tersebut. Sehubungan dengan itu, defendan kedua tidak mempunyai isu serius untuk diputuskan (lihat perenggan 35–36).

(4) Imbangan kemudahan berpihak kepada plaintif untuk mengeluarkan kaveat defendan kedua. Kewujudan kaveat akan berterusan menjejaskan hak plaintif sebagai pemilik berdaftar tanah tersebut. Dalam mana-mana kes, walaupun dengan pengeluaran kaveat defendan kedua di sini, tanah tersebut masih di bawah kaveat MCK sementara menunggu keputusan pendengaran Mahkamah Tinggi di Kuala Lumpur, di mana guaman tersebut kini digabungkan dengan guaman defendan kedua di Johor Bahru. Plaintif tidak boleh berurusan dengan atau menjual tanah

tersebut walaupun permohonan ini dibenarkan. Defendan kedua oleh itu tidak diprejudiskan dalam apa jua cara dengan pengeluaran kaveatnya (lihat perenggan 37–38).]

Notes

For a case on agreement, see 3(3) *Mallal's Digest* (4th Ed, 2013 Reissue) para 6045.

For cases on private caveat, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2577–2578.

Cases referred to

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212, PC (refd)

Institut Teknologi Federal Sdn Bhd v IIUM Education Sdn Bhd [2007] 7 MLJ 23; [2008] 1 CLJ 745, CA (refd)

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719; [1995] 3 CLJ 520, CA (refd)

Registrar of Titles, Johore v Temenggong Securities Ltd [1976] 2 MLJ 44, PC (refd)

Wong Kuan Tan v Gambut Development Sdn Bhd [1984] 2 CLJ 26, FC (refd)

Legislation referred to

National Land Code ss 323(1)(a), 327, 417, Form 19B

TT Toi (Shearn Delamore & Co) for the plaintiff.
Ng Chew Hor (Tay LE & Co) for the defendants.

Yeoh Wee Siam J:

ENCLOSURE 2

[1] This is the plaintiff's originating summons filed under s 327 and 417 of the National Land Code ('the NLC') applying for the following reliefs:

(a) that the private caveats entered upon by the first and second defendants and registered vide Presentation No 14187/2011 and Presentation No 9871/2013 respectively over two parcels of land described as Geran No 88701, Lot No 4460 and Geran No 98995, Lot No 3028 in Bandar Johor Bahru, Daerah Johor Bahru ('the said lands') be ordered removed and cancelled;

(b) that the Registrar of Land Titles of Johor Bahru cancel the said private caveats entered vide Presentation No 14187/2011 and Presentation No 9871/2013 respectively over the two parcels of land described as Geran No 88701, Lot No 4460 and Geran No 98995, Lot No 3028 in Bandar

Johor Bahru, Daerah Johor Bahru on the register document of title to the said lands and any other corresponding records of the registry of land titles;

(c) that the Registrar of Land Titles of Johor Bahru not allow any application by the first and second defendants for the entry of further caveat in respect of the two parcels of land described as Geran No 88701, Lot No 4460 and Geran No 98995, Lot No 3028 in Bandar Johor Bahru, Daerah Johor Bahru that is based on a claim similar to that upon which the private caveats bearing Presentation No 14187/2011 and Presentation No 9871/2013 respectively were based;

(d) that the first and second defendants pay the plaintiff all damages sustained by reason of the entry of and/or the failure to remove the said caveats;

(e) that all costs of this action be paid by the first and second defendants; and

(f) such other further relief or order as this honourable court deems fit and necessary.

WITHDRAWAL OF THE PLAINTIFF'S APPLICATION AGAINST THE FIRST DEFENDANT

[2] Just before the hearing of encl 2 on 14 November 2013, the plaintiff withdrew its application against the first defendant since the first defendant was not challenging the application and had already withdrawn the private caveat lodged by it.

[3] Accordingly, the court struck out the plaintiff's claim against the first defendant with no order as to costs.

[4] The hearing was only in respect of the plaintiff's application against the second defendant for removal of the private caveat lodged by the second defendant.

BACKGROUND FACTS

[5] By an agreement dated 30 June 2004 between the plaintiff and MCK Development Sdn Bhd ('MCK') the plaintiff became the registered owner of the said lands.

[6] Because there was non-fulfillment of certain terms of the agreement between the plaintiff and MCK, the plaintiff and MCK then entered into a

settlement agreement dated 6 February 2008 ('settlement agreement'). As a result, MCK lodged a private caveat over the said lands ('MCK's caveat').

[7] The plaintiff alleged that due to the failure of MCK to pay the plaintiff the settlement consideration within the stipulated timeframe, the plaintiff then became entitled under the terms of the settlement agreement to sell the said lands to any third party.

[8] MCK had instituted an action against the plaintiff in Kuala Lumpur High Court Civil Suit No S-22–641 of 2009 ('KL civil suit') for an order, inter alia, that MCK has the right to sell the said lands (exh A4 at p 135 of defendants' affidavit in reply in encl 4 Vol 2).

[9] The plaintiff disputes the claim by MCK and the plaintiff is asking for the KL civil suit to be dismissed with costs (exh A4 at pp 147–154).

SALE AND PURCHASE BETWEEN THE PLAINTIFF AND THE FIRST AND SECOND DEFENDANTS

[10] In June 2011, the plaintiff agreed to sell the said lands to the first defendant and a sale and purchase agreement dated 7 June 2011 between the plaintiff and the first defendant was entered into ('the SPA') (exh LCB1of the plaintiff's affidavit in support).

[11] A deed of novation dated 13 February 2012 was then executed whereby the first defendant named the second defendant as its nominee and transferred all its rights under the SPA to the second defendant (exh LCB2 of the plaintiff's affidavit in support).

[12] Pursuant to the SPA, both the first and second defendants lodged private caveats, respectively over the said lands. The caveats were applied for by the first defendant on 29 April 2011 ('the first defendant's caveat') and by the second defendant on 25 March 2013 ('the second defendant's caveat') (exh LCB3 of the plaintiff's affidavit in support).

[13] The completion of the SPA was subject to, inter alia, the following conditions precedent being fulfilled by the plaintiff, as the vendor, and the first defendant, as the purchaser:

(a) the vendor at its own cost and expense shall apply to the High Court in Malaya to remove MCK's caveat ('the order of the High Court');

(b) the purchaser obtaining the approval from the Economic Planning Unit of the Prime Minister's Department for the sale and purchase of the property ('the EPU approval');

(c) the order of the High Court to remove MCK's caveat shall be obtained by the vendor, and the EPU approval by the purchaser within 180 days from the date of the SPA and such other extended date as the purchaser may in its absolute discretion decide in writing (cl 3.1 of the SPA at p 25 of the plaintiff's affidavit in support).

APPLICATION TO REMOVE MCK'S CAVEAT

[14] On 20 March 2011, the plaintiff applied to the Johor Bahru High Court by Originating Summons No 24M-71 of 2011 to remove MCK's caveat.

[15] On 13 March 2012, the Johor Bahru High Court dismissed the plaintiff's application to remove MCK's caveat.

[16] The plaintiff, through its solicitors, then informed the second defendant of the decision of the Johor Bahru High Court and accordingly notified the second defendant that pursuant to cll 3.3 and 3.7 of the SPA, the agreement had been deemed terminated. The plaintiff also informed the second defendant that the deposit paid under the SPA would be uplifted and refunded to the second defendant (exh LCB4 of the plaintiff's affidavit in support).

[17] The second defendant, through its solicitors, wrote to the plaintiff's solicitors stating that the second defendant has refused to accept the termination and instead is prepared to extend the time period to fulfil the condition precedent, namely the removal of MCK's caveat (exh LCB5 of the plaintiff's affidavit in support).

[18] By a letter dated 17 May 2012 to the second defendant's solicitors, the plaintiff maintained its position that the SPA was lawfully terminated (exh LCB5 of the plaintiff's affidavit in support).

[19] By a writ of summons dated 30 July 2012, the second defendant commenced legal proceedings against the plaintiff in Johor Bahru High Court Civil Suit No 22NCVC-303–07 of 2012 ('the JB civil suit') claiming in essence for a declaration that the SPA and the deed of novation are still valid and enforceable and that the plaintiff continues with its action to remove MCK's caveat.

[20] By an order of court dated 31 October 2012, the JB civil suit was consolidated with the KL civil suit (exh A5).

[21] The above two consolidated actions were fixed for trial on 27 and 28 November 2013 but have since been postponed to a date to be fixed.

THE COURT'S DECISION GIVEN ON 14 NOVEMBER 2013 REGARDING ENCL2

[22] The plaintiff's application is allowed as follows:

prayers 1, 2 and 3	:	allowed only regarding the second defendant's caveat;
prayer 4	:	no order; subject to proof of damages;
prayer 5	:	costs of RM2,000 are to be paid by the second defendant to the plaintiff forthwith.

GROUNDS FOR THE COURT'S DECISION

The Law

[23] Section 327 of the NLC provides as follows:

> *Removal of private caveats by the Court*
>
> 327 (1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.
>
> (2) The Registrar shall, on being duly served with any order under this section for the removal of a caveat, cancel the entry thereof on the register document of title, and note thereon the reason for the cancellation and the date thereof.
>
> (3) every cancellation under subsection (2) shall be signed and sealed.

The onus is on the caveator to satisfy the court that he has a caveatable interest in the said lands.

[24] In *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212, the Privy Council laid down the nature of the onus of the caveator as follows:

> … he must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action.

[25] In *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719; [1995] 3 CLJ 520 the Court of Appeal laid down a three-stage test which must be considered when deciding whether a caveat ought to be removed or otherwise:

> The first stage is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat, then *cadit quaestio*, and the caveat must be removed without the necessity of going any further …
>
> Once the caveator satisfies the court that his claim as expressed in the application in Form 19B amounts in law to a caveatable interest, he must go on to show, in appropriate cases, that, based on the affidavits filed, his claim discloses a serious question meriting a trial. This then is the second stage …
>
> The third stage is arrived at only after the first two hurdles have been crossed by the caveator. Here the question to be asked relates to the balance of justice, or what Lord Diplock termed in *Eng Mee Yong* [1979] 2 MLJ 212 as 'the balance of convenience'. As to the matters that go to determine which direction the balance should tilt, these have already been set out in such clear terms by Lord Diplock in *Eng Mee Yong* that mere repetition becomes unnecessary.

No caveatable interest

[26] The second defendant filed Form 19B which merely states that the second defendant had purchased the said lands from the plaintiff by virtue of the deed of novation and that a deposit and part payment of the purchase price have been paid to the plaintiff's solicitors.

[27] However, there is no mention or disclosure in the second defendant's Form 19B of the following important facts:

(a) the existence of the SPA, with conditions precedent stipulated therein;

(b) the fact that the conditions precedent in the SPA had not been fulfilled, in that the application to remove MCK's caveat was dismissed by the Johor Bahru High Court on 13 March 2012; and

(c) the fact that the plaintiff had given notice to the second defendant that the SPA had been deemed rescinded or terminated due to the non-fulfillment of the conditions precedent in the SPA.

[28] The payment of a deposit and part payment by the second defendant does not give it a caveatable interest in the said lands (see *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 and *Institut Teknologi Federal Sdn Bhd v IIUM Education Sdn Bhd* [2007] 7 MLJ 23; [2008] 1 CLJ 745).

[29] If at all the second defendant has a claim against the plaintiff, it would be one for a civil debt, but not one which creates a caveatable interest in the said lands (see *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 CLJ 26).

[30] The second defendant has not shown that it has a legal or registrable interest in the said lands, or in other words, a caveatable interest within the meaning of s 323(1)(a) of the NLC.

[31] Under Recital F of the deed of novation (exh LCB2 of affidavit in support), it is true that the second defendant has the sole right 'as per terms of the principal agreement' to grant further extensions beyond 2 June 2012 to the vendor ie for the plaintiff to comply with the conditions precedent of the SPA/principal agreement. However, this sole right of the second defendants is subject to the terms of the principal agreement ie the SPA (initially entered into between the plaintiff and the first defendant; subsequently by the deed of novation, the first defendant assigned all its rights to its nominee, the second defendant).

[32] The condition to completion of the SPA is found in cl 3. Amongst others, cll 3.1.1, 3.3 and 3.7 of the SPA (exh LCB1 of affidavit in support) provide as follows:

> 3.1 The parties hereto agree that this Agreement shall be conditional upon the following:
>
> 3.1.1 The vendor at its own costs and expenses shall apply to the High Court of Malaya to remove the Private caveat ('the Order of the High Court') and remove the Private caveat from the register document of title to the Property. The Private caveat is considered removed if the official search result bearing the signature of the registrar, conducted after the lodgement of the Order of the High Court shows that the Private caveat has been duly removed from the register document of title ('the Removal of Private caveat');
>
> 3.3 In the event the vendor is unable to obtain the Order of the High Court referred to in Clause 3.1.1 and/or EPU Approval referred to in Clause 3.1.2 hereof not being obtained by the purchaser for any reason whatsoever or an appeal pursuant to Clause 3.4 below not being successful on or before the expiry of the Condition Period, the sale and purchase of the Property shall unless otherwise agreed by the parties hereto in writing, be deemed to be rescinded subject to clause 3.7 below, whereupon this Agreement shall be terminated and be of no further effect whatsoever.;
>
> …
>
> 3.7 If this Agreement shall be deemed terminated pursuant to Clauses 3.3 and 3.4 hereof, the parties hereto hereby agree that the parties' position shall remain status quo and the parties hereto shall do and execute or procure the doing or execution of all such things or documents as may be necessary to effect and maintain the parties' status quo, in which event the vendor's solicitors (which the vendor hereby

irrevocably authorises) shall refund to the purchaser all monies paid by the purchaser towards the Purchase Price including the sum stated in Section 8 of the Schedule with accrued interest within fourteen (14) working days from the date of receipt of a demand by the vendor or the vendor's solicitors and thereafter this agreement shall be treated as terminated and of no effect thereafter save for any antecedent breach (if any).

[33] In this case, the plaintiff as vendor, failed to get an order from the Johor Bahru High Court to remove MCK's caveat. Thus, under cl 3.3 of the SPA, the SPA is deemed to be rescinded and shall remain terminated. There is no evidence that both parties have otherwise agreed to the extension of time to be given to the plaintiff to apply for a second time to remove MCK's caveat.

[34] The second defendant had unilaterally agreed to give the plaintiff an extension of time to remove MCK's caveat even though the Johor Bahru High Court has dismissed the plaintiff's application for removal of such caveat on 13 June 2012. However, the plaintiff did not agree to such extension of time. In such a situation, the provisions the SPA, in particular cl 3.3, should prevail. The SPA remains terminated. That being the case, the second defendant no longer has a caveatable interest in the said lands.

No serious issue to be tried

[35] The plaintiff has fulfilled its obligations under cl 3.1.1 of the SPA when it made the application to the Johor Bahru High Court to remove MCK's caveat. When such court dismissed the plaintiff's application, the plaintiff's obligations to fulfil the conditions precedent are over and the plaintiff is entitled to rescind and terminate the SPA.

[36] With the termination of the SPA, the second defendant no longer has any caveatable interest in the said lands. It follows that the second defendant has no serious issue to be tried.

The balance of convenience is in the plaintiff's favour

[37] The balance of convenience lies in favour of the plaintiff to remove the second defendant's caveat. The existence of the caveat would continue to adversely affect the plaintiff's right as the registered owner of the said lands.

[38] In any case, even with the removal of the second defendant's caveat here, the said lands are still under MCK's caveat pending the outcome of the hearing of the 2009 KL civil suit, which suit is now consolidated with the second defendant's JB civil suit. The plaintiff would not be able to deal with or sell the

said lands even though this application is allowed. The second defendant is therefore not prejudiced in any way by the removal of its caveat.

[39] Based on the above considerations, I therefore ordered accordingly.

Plaintiff's application allowed with costs.

Reported by Ashgar Ali Ali Mohamed